



U.S. Department of Justice

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AB:AS

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September 4, 2019

By ECF

The Honorable Nicholas G. Garaufis
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Anthony Donato,
Criminal Docket No. 05-0060 (NGG)

Dear Judge Garaufis:

The government respectfully submits this letter in response to the Court's August 19, 2019 Order directing it to respond to defendant Anthony Donato's December 2018 Motion, Dkt. No. 1449, to "unseal all Joseph Barone FBI 302s and handwritten notes pertaining to the Santoro homicide." The motion is moot and meritless.

First, the defendant has already apparently obtained these documents, and has attached the Barone 302 related to the Santoro homicide as part of his petition to vacate the judgment denying his habeas petition. See Civil Docket No. 09-5617, Dkt. No. 39-1, at 18-19. As the ECF stamp on the top of the document shows, the defendant obtained these documents from co-defendant Vincent Basciano's habeas litigation. See Civil Docket No. 12-280, Dkt. No. 20-1, at 3-5 (Barone 302 and handwritten notes). To the government's knowledge, these are the only Barone documents that pertain to the Santoro homicide.

Second, as the government explained in response to the defendant's latest habeas filing, Civil Docket No. 09-5617, Dkt. No. 45, the defendant is not entitled to this material. The documents are not exculpatory as to him, and the defendant has pled guilty, waiving further discovery.¹

¹ "[T]he Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant." United States v. Ruiz, 536 U.S. 622, 633 (2002); accord Friedman v. Rehal, 618 F.3d 142, 153 (2d Cir. 2010) ("[B]ecause 'impeachment information is special in relation to the *fairness of a trial*, not in respect to whether a plea is *voluntary* ('knowing,' 'intelligent,' and 'sufficient[ly] aware'), Ruiz, 536 U.S. at 629 (emphasis in original), the

